

Message Text

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ACTION EUR-12

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NSAE-00 ICA-11 TRSE-00 XMB-02 OPIC-03 SP-02
LAB-04 SIL-01 OMB-01 ISO-00 PM-05 MCE-00 SS-15
L-03 ACDA-12 /098 W
-----074497 151442Z /75

R 151224Z JUN 78
FM AMEMBASSY MADRID
TO SECSTATE WASHDC 4939
INFO SECDEF WASHDC
USCINCEUR VAIHINGEN GER
CSA WASHDC
CDRUSASAC ALEXANDRIA VA
CDRUSACC FT HUACHUCA ARIZ
CDRUSACSA FT MONMOUTH NJ

C O N F I D E N T I A L SECTION 01 OF 03 MADRID 06735

SECDEF FOR ASD/ISA AND DSAA

CDRUSASAC FOR DRCDS

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E.O. 11652: GDS
TAGS: MASS, SP, US
SUBJECT: TERRITORIAL COMMAND NET (TCN) FOR SPAIN

REF: STATE 149905 (DTG 132015Z JUN 78) (NOTAL)

1. SUMMARY: THE SPECIAL SESSION ON JUNE 14 OF THE JOINT
COMMITTEE FOR POLITICO-MILITARY ADMINISTRATIVE AFFAIRS
(PMAA) OF THE U.S.-SPANISH COUNCIL PRODUCED, IN A
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- A LENGTHY SPANISH ARMY EXPOSITION ON LEGAL,
TECHNICAL AND FINANCIAL DIFFERENCES (TEXT, WHEN TRANSLATED,
WILL BE PROVIDED BY SEPTTEL);
- RENEWED SPANISH INSISTENCE THAT TCN BE TREATED AS A
SPECIAL BILATERAL ARRANGEMENT, NOT AS A ROUTINE FMS CASE;

- STRONG SPANISH INSISTENCE THAT FURTHER DISCUSSIONS SUCH AS THIS ON TCN BE CARRIED OUT UNDER THE GENERAL AUSPICES OF THE PMAA, RATHER THAN IN STRICTLY ARMY-TO-ARMY CHANNELS;

- A FORECAST THAT THE SPANISH ARMY WILL SUBMIT OVER \$20 MILLION IN COUNTER CLAIMS;

- SPANISH ARMY CONFIRMATION THAT PAYMENT 12 (\$2.3 MILLION) WILL NOT BE HELD UP AND AGREEMENT IN PRINCIPLE -- AND SUBJECT TO CONFIRMATION AT A HIGHER R LEVEL -- TO MAKING PAYMENT 13 (\$2.9 MILLION) IF A U.S. REQUEST IS RECEIVED THAT CLEARLY STATES THAT SPANISH PAYMENT WOULD IN NO WAY INDICATE ACCEPTANCE OF TCN OR OF ANY ADDITIONAL COSTS STEMMING FROM CLAIMS, OVER AND ABOVE THE AGREED AMENDED BASIC COST OF THE CONTRACT (\$28.3 MILLION);

- SPANISH ACKNOWLEDGMENT OF THE U.S. OFFER TO RECEIVE IN WASHINGTON A COMBINED TECHNICAL/POLICY-LEVEL TEAM (WE EXPECT TO HEAR FURTHER ON THIS FROM THE GOS). END SUMMARY.

2. ACTION REQUESTED:

A. INSTRUCTIONS WITH RESPECT TO A FORMAL REQUEST TO THE SPANISH ARMY THAT IT MAKE PAYMENT 13;
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B. PROPOSAL OF JULY DATES FOR A TEAM TO VISIT WASHINGTON.

3. THIS MEETING OF THE PMAA WAS SCHEDULED AT SPANISH INSISTENCE, PRINCIPALLY TO ELEVATE TCN DISCUSSIONS TO THE POLICY LEVEL AND TO EXERCISE THE PROVISION OF THE MOU ON TCN PROVIDING FOR REFERRAL OF DIFFERENCES TO THE "JOINT COMMITTEE" (NOW U.S.-SPANISH COUNCIL), A PROVISION WHICH FORMS AN IMPORTANT PART OF THE SPANISH ARGUMENT THAT TCN IS NOT A ROUTINE FMS CASE. THE MEETING WAS DEVOTED LARGELY TO AN EXPOSITION BY A SPANISH ARMY LEGAL EXPERT (COL. MIRANDA) ON LEGAL, TECHNICAL, AND FINANCIAL DIFFERENCES WITH THE U.S. ARMY ON THE PROJECT.

4. COL. MIRANDA DESCRIBED THE LEGAL PROBLEM AS MOST IMPORTANT IN THE SENSE THAT IT PERMEATES ALL OTHER PROBLEMS WHILE THERE REMAINS DISAGREEMENT ON WHETHER THE TCN CONTRACT IS A REGULAR FMS CASE OR A SPECIAL BILATERAL AGREEMENT THERE IS NO HOPE OF AGREEMENT ON OTHER MATTERS, HE SAID. HE THEN PROVIDED A LENGTHY BRIEF ON LEGAL, TECHNICAL AND FINANCIAL ISSUES WHICH MADE THE FOLLOWING POINTS, INTER ALIA:

A. LEGAL: THIS SPECIAL TCN AGREEMENT CONSISTS OF
3 DOCUMENTS: THE MAY 1972 MOU AND 2 LOA'S (MAY 1972 AND
FEB. 1974), AMONG WHICH THE MOU TAKES PRECEDENCE. THE
U.S. ARMY ENTERED INTO A CONTRACT WITH THE FEDERAL
ELECTRIC CORP (FEC) DESPITE THE SPANISH ARMY'S OBJECTIONS.
THE SPANISH ARMY WENT ALONG IN VIEW OF CERTAIN VERBAL
GUARANTEES AND THE PROVISIONS OF ARTICLE II AND IV OF THE
MOU. PROVISIONAL ACCEPTANCE BY THE U.S. ARMY OF THE 3 SUB-
SYSTEMS REFLECTED ARBITRARY AND UNILATERAL INTERPRETATION
OF ARTICLE V OF THE MOU. THE ESTABLISHED MACHINERY FOR
RESOLUTION OF DIFFERENCES HAS NOT BEEN USED, THE RECOURSE
TO U.S. COURTS BEING EXPRESSLY WAIVED BY AGREEMENT ON
ARTICLE X.
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B. TECHNICAL: THE TECHNICAL SPECIFICATIONS HAVE NOT BEEN MET. THE SPANISH ARMY HAD NO REAL OPPORTUNITY TO INFLUENCE U.S. ARMY TECHNICAL DECISIONS BETWEEN AGREEMENT ON TECHNICAL SPECIFICATIONS AND THE POINT AT WHICH PROVISIONAL ACCEPTANCE OF SUBSYSTEM A WAS INVITED. PRODUCTION LINE MATERIALS PROVEN ON THE COMMERCIAL MARKET WERE NOT USED IN ALL CASES. THERE HAVE BEEN ALMOST 100 TECHNICAL DEFICIENCIES TO DATE. THESE HAVE NOT BEEN ADEQUATELY CORRECTED AND REQUIRED RELIABILITY LEVELS HAVE NOT BEEN REACHED. SINCE SUBSYSTEM A COULD NOT BE ACCEPTED, NEITHER
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COULD B OR C. THEIR CONDITIONAL ACCEPTANCE BY THE U.S. ARMY VIOLATED THE TERMS OF THE AGREEMENT. AGREED LOGISTICAL SUPPORT HAS NOT BEEN PROVIDED (E.G., MANUALS, SPARES, ON-THE-JOB TRAINING).

C. FINANCIAL: THIS IS A FIXED PRICE (PLUS INCENTIVE) CONTRACT. THE PAYMENT CONDITIONS ARE NOT THOSE OF TYPICAL FMS CASES. ERRORS BY THE U.S. ARMY CANNOT, FOR REASONS OF SOVEREIGNTY, BE ACCEPTED BY SPAIN, SINCE SPAIN PLAYED NO ROLE IN NEGOTIATION OF THE CONTRACT WITH FEC. DESPITE DEFICIENCIES, SPAIN HAS MET THE TERMS OF THE PAYMENT SCHEDULE. PAYMENT 12 WAS AUTHORIZED SEVERAL MONTHS AGO. EXCEPT FOR SMALL AMOUNTS IN NON-CONVERTIBLE PESETAS, NOT YET REQUESTED BY THE U.S., ONLY PAYMENT 13 REMAINS IN QUESTION, IT HAVING BEEN AGREED THAT IT WOULD BE PAID WHEN THE SYSTEM WAS ACCEPTED BY THE SPANISH ARMY. THE CHARGES BEING LEVIED FOR PAYMENT OF CONTRACTOR CLAIMS ARE LARGELY IMPROPER; MOREOVER, THE SPANISH ARMY WILL DOCUMENT OVER \$20 MILLION IN EXTRA COSTS TO SPAIN.

5. IN SUMMARY, THE SPANISH ARMY PAPER MAKES 4 REQUESTS:

A. U.S. ARMY RECOGNITION THAT TCN INVOLVES A SPECIAL BILATERAL AGREEMENT BETWEEN GOVERNMENTS;

B. A U.S. ARMY OBLIGATION TO CORRECT TECHNICAL DEFICIENCIES, BOTH KNOWN AND LATENT WITHIN A CERTAIN TIME AND MANNER;

C. ACCEPTANCE OF THE IMPLICATIONS OF THIS BEING A FIXED PRICE CONTRACT AND ONE IN ACCORDANCE WITH THE CONTENT OF DD 1513 OF 21 FEB 74 AND AMENDMENT 3 TO IT OF 1 JULY 76, INTERPRETING THE STANDARD GENERAL CLAUSES OF THESE FORMS

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AS NOT TAKING PRECEDENCE OVER THE SPIRIT AND CONTENT OF THE
CONTRACT ITSELF; AND

D. RECOGNITION THAT THE ONLY ADDITIONAL COSTS RELATED TO
EXECUTION OF THE CONTRACT WHICH ARE PAYABLE BY THE SPANISH
ARMY ARE THOSE DERIVING FROM SPECIFIC SPANISH ARMY
REQUESTS OR MUTUAL AGREEMENT BETWEEN THE TWO ARMIES.

THE TEXT CLOSES WITH THE STATEMENT THAT, ALL OF THESE
POINTS HAVING BEEN MADE BEFORE AND EITHER IGNORED OR NOT
UNDERSTOOD BY THE U.S. ARMY, AGREEMENT TO THEM IS NOW
REQUESTED IN THIS WAY, WITH A VIEW TO ELEVATION OF
DIFFERENCES TO THE U.S.-SPANISH COUNCIL.

6. THE U.S. SIDE RESPONDED USING THE TALKING POINTS
PROVIDED IN THE REFTEL, AND AGAIN WENT OVER THE GROUND OF
THE QUALITY OF THE SYSTEM BEING PROVIDED, CURRENT EFFORTS
TO CORRECT TECHNICAL DEFICIENCIES, THE IMPORTANCE OF FULL
SPANISH USE OF THE SYSTEM, THE GREAT IMPORTANCE OF
ARRIVING SOON AT A COMMON BASIS FOR JUDGMENT AS TO WHAT
CONSTITUTES A TECHNICALLY ACCEPTABLE SYSTEM, THE UTILITY
OF AN EVALUATION IN THE COMING MONTHS BY THE DEFENSE
COMMUNICATIONS AGENCY, AND THE NEED TO PROVIDE FOR
ADEQUATE MAINTENANCE OF THE SYSTEM.

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7. THE SENIOR SPANISH ARMY REPRESENTATIVE, BRIG. GENERAL FIGUERUELA, COMMENTED THAT THE RECENT TRIP TO THE FRG HAD CONFIRMED TO THE SPANISH ARMY THAT TCN LACKS A LOT BY COMPARISON WITH WHAT THE U.S. ARMY HAS THERE.

8. THE U.S. SIDE DEVOTED PARTICULAR EMPHASIS TO THE PROBLEM OF PAYING AMOUNTS DUE THE CONTRACTOR, ASKING SPECIFICALLY FOR EARLY DEPOSIT OF PAYMENTS 12 AND 13. IN RESPONSE, COL. MIRANDA CONFIRMED THAT THE ONLY DELAY IN PAYMENT 12 HAS BEEN RELATED TO EXTENSION OF THE 1970
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EX-IM BANK LINE OF CREDIT. REGARDING PAYMENT 13, HE OFFERED IN PRINCIPLE, AND SUBJECT TO CONFIRMATION BY HIGHER AUTHORITY, TO MAKE THE PAYMENT IN RESPONSE TO A SPECIFIC U.S. REQUEST WHICH WOULD EXPRESS CLEARLY THAT SUCH PAYMENT WOULD NOT IMPLY SPANISH ACCEPTANCE OF THE SYSTEM OR OF ANY COSTS STEMMING FROM CLAIMS OVER AND ABOVE THE AGREED CONTRACT PRICE.

9. THERE APPEARED TO BE AGREEMENT IN PRINCIPLE THAT THE VENUE OF DISCUSSIONS OF THIS NATURE MIGHT SHIFT NEXT TO WASHINGTON, BUT WITH THE SPANISH RESERVATION THAT FURTHER DISCUSSIONS SHOULD BE REGARDED AS REMAINING WITHIN THE CONTEXT OF PMAA DELIBERATIONS, THUS RECOGNIZING THAT THEIR POLITICAL IMPLICATIONS TAKE THEM OUT OF THE PURELY ARMY-TO-ARMY CHANNEL. THERE WAS AGREEMENT THAT THE SPANISH TEAM, IF IT GOES, WOULD INCLUDE BOTH TECHNICAL AND POLICY-LEVEL OFFICIALS. EATON

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Status: NATIVE
Subject: TERRITORIAL COMMAND NET (TCN) FOR SPAIN
TAGS: MASS, SP, US
To: STATE
Type: TE
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